FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 38180 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

CORAM: A.S. OKA, J.
DATE : 17th August, 2004.

P.C.:-

1. The first Appeal is filed by the Appellant Insurance Company for challenging the Judgment and Award in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988. Civil Application for condonation of delay was moved before me alongwith application for stay. Since this Appeal arises out of a claim for compensation on account of fatal accident, I examined the merits in Appeal. Unless there is some merit in the Appeal, no purpose will be served by issuing notice on application for condonation of delay as the Original

Claimants will be unnecessarily penalised as they will have to engage services of an advocate and will have to bear substantial expenditure. In this view of the matter, I have examined the merits of the case.

2. A finding has been recorded by the Tribunal that the truck which was driven by the Original Opponent no.2 and owned by the Original Opponent no.1 was involved in the accident and the accident occurred only due to rash and negligent driving on the part of the driver of the Truck. The Opponent no.1 and 2 remained absent and the Appellant Insurance Company with which the truck was insured contended that the accident took place due to rash and negligent driving of jeep in which the deceased was travelling. The learned counsel appearing for the Appellant has placed reliance on an application for additional evidence made in this Appeal. Alongwith the application for additional evidence, he has produced a copy of the order dated 27th February, 1988 passed by the Judicial Magistrate First Class,

Bhor. By the said Judgement, the driver of the Truck who was prosecuted for various offences including the offences punishable under section 279 and 304(A) of Indian Penal Code was acquitted. He submitted that the copy of the said Judgment was not available when the Claim Petition was decided. He submitted that in view of the said Judgment of the Criminal Court, findings as regards negligence on the part of the driver of the Truck will have to be set aside. The learned Counsel fairly stated that in sofar as the quantum of compensation is concerned, in view of the law laid down by various Judgments of Apex Court it will be difficult for the Insurance Company to challenge the quantum of compensation.

2. The Tribunal has recorded a finding that the driver of the truck was negligent. The Tribunal found that the Appellant Insurance Company failed to lead any evidence by examining the truck driver or any other eye witness. the learned member of the Tribunal has therefore drawn adverse inference

against the Appellant. As stated earlier, the driver and owner of the Truck did not contest the claim.

3. In so far as the Judgment of the Criminal Court is concerned it is well settled that it is not at all conclusive in a civil proceedings filed for claiming compensation under the law of Torts. The perusal of the said judgment shows that the driver has been acquitted as material witnesses failed to step into the witness box. Therefore the acquittal cannot be said to be an acquittal which is on merits. In any event, the said Judgment will not bind the Tribunal while deciding the claim under the law of torts. No explanation is given as to why no efforts were made on the part of the Appellant to examine the Truck Driver or any other eye witnesses. The Judgment of the Criminal Court will not help the Appellant in establishing negligence on the part of the driver of the Jeep. Therefore, there is no merit in the Appeal. The Tribunal was right in drawing adverse inference and holding that the accident

took place due to negligence on the part of the driver of the truck.

4. Hence there is no merit in the Appeal. The Application for condonation of delay is rejected and consequently the Appeal is dismissed with no orders as to costs. The Appellant will be entitled to withdraw a sum of Rs. 25,000/- deposited in this Court in accordance with section 173 of the Motor Vehicles Act, 1988. Six weeks time is granted to the Appellant to comply with impugned Judgment and order.

Sd/-

JUDGE